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No. 178

IN THE

Supreme Court of the United States

October Term, 1958

SS MONROSA, HER ENGINES, TACKLE, ETC., AND NAVIGAZIONE ALTA ITALIA, *Petitioners*

-versus-

CARBON BLACK EXPORT, INC., *Respondent*

ON WRIT OF CERTIORARI
To the United States Court of Appeals
for the Fifth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners pray that this Court grant rehearing of its order of March 30, 1959, dismissing the writ of certiorari granted October 13, 1958 (358 U.S. 809) to review the judgment of the Court of Appeals for the Fifth Circuit in the above-entitled case (as reported at 254 F. 2d 297), after oral argument was heard on March 3, 4, 1959, reverse the judgment of the Court of Appeals below and reinstate the Final Decree of the District Court.

REASONS FOR GRANTING REHEARING

1. The Court's opinion in this case leaves completely unanswered the principal and primary issue which has not only existed in this case from its inception, but has been recognized as such by all parties and all courts who have considered this matter—that is, is an agreement to adjudicate claims for cargo damage in a foreign jurisdiction void as contrary to public policy?

To postpone until another day the ultimate decision of this most important question of admiralty law is but to leave in a state of non-uniformity the admiralty law which this Court constantly seeks to keep uniform for it leaves unresolved the basic conflict between the decision of the Court of Appeals below and the Court of Appeals for the Second Circuit in the Muller case.[1]

To decide this question now would not be a purely administrative or managerial resolution of this conflict but a real judicial function as there is presently pending on the docket of the District Court below a motion by these same Petitioners involving this precise question,[2] the decision of which has been deferred awaiting this Court's decision of the question. The motion now pending in that case before the District Court below involves a similar shipment of carbon black stored in the same hold of the same ship and damaged at the same time and in the same manner as the carbon black of the Respondent herein. Petitioners' Motion to Decline Jurisdiction in the case pending in the District Court below is based on exactly

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[1] 224 F.2d 806 (2 C.A.), cert. denied 350 U.S. 903 (1955).

[2] A.D. No. 1458, Insurance Company of North America v. SS MONROSA and Navigazione Alta Italia.

the same grounds relied on in this case but does not involve the *in rem* issue on which this Court has decided this case, for *in rem* jurisdiction has not been obtained over the SS MONROSA and cannot now be obtained as the vessel is laid up in Italy and is not expected to return to the United States. Thus the District Court is without an authoritative decision resolving the conflict on this important question relating to *in personam* jurisdiction between the Courts of Appeals of the Second and Fifth Circuits.

If the Court does not now decide this question, it is undoubtedly only a matter of the time required in the case pending in the District Court below to progress through the Court of Appeals before this Court will be squarely presented with precisely this same question. So much interest has been shown by other admiralty lawyers in this country on this important issue that counsel for Petitioners would not be surprised to see the question presented even before the case pending in the District Court below can reach this Court.

The question has been fully briefed and argued and it is respectfully submitted that sound judicial functioning requires a resolution of this question without further delay.

2. The majority opinion dismissing the writ expressly states that certiorari was granted so that this Court could pass upon the enforceability of jurisdictional clauses in ocean bills of lading in the following terms:

> "While the parties were entitled to have the judgments of the Courts below as to whether the libel in personam was also maintainable, we do not believe it a proper exercise of our discretionary jurisdiction to pass on that aspect of the case, which alone presents the question which led us to grant certiorari." (pps. 3 and 4 of the majority opinion).

However, the unquestionable presence of the *in rem* aspect of this case was readily apparent in the certiorari papers (page 2 of the dissent) and the distinct possibility must have been apparent to this Court upon granting the writ initially that it might ultimately decide the case on the *in rem* portion alone since not only the certiorari papers but the briefs of the parties show that the Questions Presented were both as to the *in personam* and *in rem* aspects of the case.

In order to have the enforceability of such jurisdictional clauses in ocean bills of lading judicially determined Counsel for Petitioners would conservatively estimate that the parties have spent approximately $15,000 to bring this case before the Court for its decision because of their sincere beliefs that the national and international importance of the enforceability of such agreements should be settled by this Court. The far reaching importance of the question which the Court declines to decide in its opinion is graphically illustrated by the proceedings of the Maritime Law Association of the United States which formed a special committee from its membership to consider decisions of the Court of Appeals for the Second Circuit regarding such jurisdictional clauses. The proceedings of this Committee of the Maritime Law Association of the United States before the membership of the Association in its documents Nos. 403, 409 and 414 at the Association's fall meeting on November 9, 1956, the fall Committee report dated October 29, 1957 and the proceedings in the fall meeting of November 8, 1957, respectively, are appended hereto as Appendices A, B and C. Particular attention is directed to Appendix A, infra p. 13, from Document No. 403, where there is a specific reference to the then pending decision of the District Court below, and to the decided

probability that this question would be decided by this Court in this case, and to Appendix B, infra p. 22, from Document No. 409 which includes a proposed amendment to the Carriage of Goods by Sea Act to cover this question.

Further activity of the Maritime Law Association has been deferred awaiting this Court's decision of the question in this case.

These documents strikingly reflect not only the importance of this question to the Admiralty Bar of this country, but the almost equally divided views of the Admiralty Bar on it. An authoritative decision from this Court is needed to settle these differences.

3. The opinion of this Court fails to consider whether or not the District Court's order in declining jurisdiction is sustainable under the doctrine of forum non conveniens, without regard to the agreement. Petitioners' Motion to Decline Jurisdiction (R. 10-11) seeks a declination of jurisdiction on the alternate ground of forum non conveniens. Petitioners have argued and presented to the Court that the order of the District Court in declining jurisdiction is enforceable under the District Court's inherent powers to decline jurisdiction in Admiralty cases on the basis of forum non conveniens, *whether it be as to the in rem libel or the in personam action.* (Reply brief for Petitioners, Pages 21-23). The majority's opinion clearly indicates that the writ is being dismissed solely because the majority of the Court finds that the agreement did not extend to the *in rem* portion of the libel. However, the majority completely disregards whether or not the agreement is enforceable as to the *in rem* portion on the grounds of forum non conveniens. Petitioners have sought the re-

versal of the Court below and the reinstatement of the District Court's order both as to the *in rem* and *in personam* actions on the alternate ground that it is supportable under the doctrine of forum non conveniens and Petitioners are entitled to have this Court pass upon and decide this question. There can be no question but what it was before the Court upon the granting of the writ and was not determined before the Court dismissed the writ. Hence on this ground alone the writ was improperly dismissed.

4. The decision of the majority that Respondent may proceed with a trial of the *in rem* action independently of the *in personam* action is clearly wrong in view of the jurisdictional agreement. While it is clear in the Admiralty Law in this country that under certain circumstances the holder of a maritime lien may pursue a vessel independently of the ship's owner, it is equally clear that the fiction of the personification of a ship, as the law of maritime liens developed in this country, arose to prevent injustices, by permitting a party aggrieved, by tort or breach of contract to obtain restitution not available *in personam*. Respondent seeks to utilize the fiction to avoid a contract to which it assented, for in effect to require the shipowner to defend the *in rem* action in this country is to thwart entirely a trial of the issues in this cause in the agreed upon forum.

Inserting the word "ship" in the jurisdictional clause, as the majority would require, would be mere surplusage when it is realized that once a party has agreed not to proceed in a forum against the ship's owner, he cannot proceed *in rem* against that owner's ship, once the vessel has posted security to protect cargo's lien. No authority has been cited by Respondent or by the majority in its

opinion, and it is submitted that none exists, that the order or nature of proof in this proceeding *in rem* will in any way differ from the *in personam* action against the vessel owner, now pending in Genoa.

The personification of the ship in American maritime lien law has no such purpose or requirement. The development of the maritime lien law in this country with its means of enforcement by an *in rem* proceeding is treated in the latest work on the Law of Admiralty,[3] in such a fashion that it leaves no room for enlargement of the personification of the ship theory to enable a cargo maritime lien holder to avoid an otherwise valid agreement. The maritime lien held by Respondent as cargo owner gives it no more right than the right to assure through the *in rem* libel the presence of security for the lien, the assurance of a fund to satisfy it. However, once secured there is nothing to support proceeding to trial separately on the *in rem* libel nor has any authority, reason or practice been advanced by the parties or cited in the majority opinion, to undermine Petitioners' contention that:

> Once a cargo maritime lienor has its *in rem* seizure of the vessel at any place where it has found the vessel and has received, either by the Marshal holding the ship or by a bond on file in substitute for the ship, full security to satisfy its claim, the trial of the issues raised by the libel, both *in rem* and *in personam*, can be held in any Court upon which the parties agreed in advance.

Petitioners' position to this effect is tempered by a requirement of a showing that the agreement was not unreason-

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[3] The Law of Admiralty, Gilmore & Black (1957 Edition—pp. 480-510).

able in a particular case in which it exists. This is the result when the nature of the *in rem* action is considered in its proper prospective as no more than a security device, which, when satisfied, by the posting of adequate security, under no rule of law or characteristic of the lien, imparts a further right to a trial in the jurisdiction where the surety bond is posted. Generally the trial may proceed in the jurisdiction where the bond is posted but, when the Lienor has agreed to sue elsewhere and such agreement has been found enforceable, no sound rule of law or of contract interpretation exists for proceeding to trial separately in the forum where the bond has been posted, in complete usurpation of the jurisdictional agreement.

Respondent in fact has but one cause of action and after it has its security its agreement to litigate the issues in a particular forum should control.

Conclusion

For the reasons set forth above, it is respectfully urged that rehearing be granted, that the judgment of the Court of Appeals below should be reversed and that of the District Court below reinstated.

Respectfully submitted,

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Of Counsel:

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Houston 2, Texas

Certificate of Counsel

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

E. D. VICKERY
Counsel for Petitioners

April 22, 1959.

APPENDIX A

DOCUMENT No. 403

Committee to Consider the Decisions of the Courts of the Second Circuit Regarding Jurisdiction and Forum

Mr. Nicholas J. Healy, III, Chairman, read the following report:

The Committee met and duly considered the decision of the United States Court of Appeals for the Second Circuit in *The Oklahoma* (*Wm. H. Muller & Co. Inc., v. Swedish American Line, Ltd.*), 224 F. 2d 806, 1955 A.M.C. 1687, cert. denied, 100 L. Ed. 103, 1955 A.M.C. 2406, and the decision of the United States District Court for the Southern District of New York in *The Bio Bio*, 127 F. Supp. 13, aff'd 227 F. 2d 519 (C.C.A. 2). Consideration was also given to *The Punta Del Este*, 135 F. Supp. 394, 1955 A.M.C. 2288, a decision of the United States District Court for the District of New Jersey.

In *The Oklahoma*, supra, Judge Conger exercised his discretion and declined to retain jurisdiction of a suit brought by a New York corporation to recover for the loss of a shipment of 1,000 bags of cocoa beans when the Oklahoma sank while en route from Gothenburg, Sweden, to United States Atlantic ports. Respondents moved for an order declining jurisdiction and dismissing the libel on the ground that the parties had agreed to jurisdiction in Swedish Court, and upon the ground of *forum non conveniens*. Respondents pleaded the bill of lading, including the jurisdictional clause, reading as follows:

> "JURISDICTION. Any claims against the carrier arising under this Bill of Lading shall be decided according to Swedish law, except as provided elsewhere

herein, and in the Swedish courts, to the jurisdiction of which the Carrier submits himself."

The District Court held that there was nothing in the Carriage of Goods by Sea Act which invalidated such a stipulation, and, since there was no showing that libelant could not obtain justice in Sweden, gave the agreement the full effect. The Court also stated:

> "Were I to reach the question of *forum non conveniens*, I would hold to the same conclusion in view of the agreement plus the fact that the Oklahoma is Swedish owned, was built in Sweden, and all the crew members reside there."

On appeal the Court of Appeals agreed that the Carriage of Goods by Sea Act, 1936, did not invalidate the jurisdictional agreement and held that the enforcement of a clause such as the one quoted would not be in contravention of public policy. The Court said "that in each case the enforceability of such an agreement depends upon its reasonableness." The Court of Appeals held that the District Court did have jurisdiction, but went on to say:

> "But if in the proper exercise of its jurisdiction, by a preliminary ruling the court finds that the agreement is not unreasonable in the setting of the particular case, it may properly decline jurisdiction and relegate a litigant to the forum to which he assented."

The Court of Appeals then considered "the setting of this case", as shown by respondents, and held:

> "On this showing, we think the judge below could rightly conclude that the jurisdictional agreement was not unreasonable and that the adherence of the parties to that agreement, which for aught that appears was freely given, should be given effect. In declining jurisdiction and dismissing the complaint we think he was well within the limits of lawful judicial discretion."

In *The Bio Bio*, the Southern District Court followed *The Oklahoma*.

In *The Punta Del Este*, the District Court for the District of New Jersey retained jurisdiction of a suit between foreigners despite an agreement as to foreign jurisdiction.

One additional case involving similar issues is pending in a District Court in the Fifth Circuit.

[4076]

It is the view of a majority of the Committee that it would be inadvisable for this Association to take any action with respect to *The Oklahoma* decision at the present time, for the following reasons:

1.) A similar case is now pending in a district court in the Fifth Circuit, and it is conceivable that that case may eventually come before the Court of Appeals and possibly before the United States Supreme Court. It is therefore conceivable that before long *The Oklahoma* case may be overruled.

2.) If legislation to counteract the effect of *The Oklahoma* were enacted, it would limit the exercise of judicial discretion to decline jurisdiction in cases where the particular Court feels that justice would best be served by declining it. This would be a very drastic limitation by

the legislature of a prerogative which traditionally has been considered that of the judiciary.

3.) Thus far, there has been no serious prejudice to American litigants as a class as a result of *The Oklahoma* decision.

4.) More time will have to elapse before the full import of *The Oklahoma* decision can be properly evaluated.

5.) The effect of *The Oklahoma* decision is not so momentous as to warrant the sponsorship, by this Association, of a bill to counteract its effect, merely because a substantial number, or perhaps even a bare majority of the members of the Association, may disagree with the United States Court of Appeals for the Second Circuit. It is felt that this Association should not sponsor Congressional legislation to counteract the effect of a particular court decision unless a substantial majority of the members feel that the decision is contrary to the objectives of the Association.

The Committee recommends that it be continued, at least until the next meeting of the Association, for the purpose of considering and reporting on any similar decisions which may be rendered, but that no further action be taken by the Association at this time.

Respectfully submitted,

NICHOLAS J. HEALY, 3RD,
Chairman
NORMAN M. BARRON
HENRY C. BLACKISTON
JOHN F. GERITY
GORDON W. PAULSEN

Mr. Henry N. Longley read the following minority report:

We dissent from the Report of the Committee to be submitted to the Association at its meeting to be held on November 9, 1956.

At the meeting of the Committee on November 1, 1956, and with particular reference to the decision of the Court of Appeals for the Second Circuit in *The Oklahoma*, 224 Fed. 2d 806, Mr. Longley moved that the Committee prepare and submit to the Association for its consideration a bill for ultimate submission to the Congress of the United States, making invalid a clause in a shipping contract requiring an American citizen suing in his own right, to pursue his rights in some foreign country, such as that of the flag of the carrying ship.

The motion was defeated. The majority of the Committee thought that no action should be taken until more and similar cases concerning the question of an American citizen's absolute right to maintain jurisdiction in American courts were decided.

We believe that the decision of the Court of Appeals for the Second Circuit in *The Oklahoma* case and the denial by the United States Supreme Court (350 U.S. 903), of the petition for a writ of certiorari are sufficient indications that the courts, finding no prohibition in the United States Carriage of Goods by Sea Act or any other Act against "jurisdiction" clauses in bills of lading, will continue to hold that a citizen of the United States is bound by such clauses to institute actions in a foreign country where there is a bill of lading clause containing that limitation of action.

We think the state of affairs which these clauses and *The Oklahoma* case has created is unfair to American citizens engaged in international commerce. Under this decision an American citizen may be deprived of redress in our courts by the simple expedient of a foreign shipowner inserting in its bill of lading a provision requiring suit in the country of the ship's flag.

The fact that the Court of Appeals for the Second Circuit based its holding on the ground that the facts of *The Oklahoma* case made the bill of lading clause "reasonable", only serves to confuse rights about which there should be no question in the minds of American businessmen.

Furthermore, the duty under the clauses in question to sue in a foreign country practically eliminates any right of action which a cargo owner may have where the amount of the loss does not justify referral of the case to a foreign country. Moreover, where the ship flies the

flag of a foreign country which has a system of law quite different from our own—such as, Japan, for instance—the decision in effect destroys the rights of an American citizen.

This windfall to foreign ship owners, we believe, will not be condoned by Congress which sought through "the Carriage of Goods by Sea Act" to remove long standing inequities against cargo owners resulting from other unilateral clauses in ocean bills of lading.

Respectfully,

HENRY N. LONGLEY
GEORGE B. WARBURTON

Mr. Longley argued that bill of lading clauses which take from American citizens the right to appeal to American courts destroy the rights of American citizens whose cargo is carried on foreign flag ships. He urged the adoption of the Minority Report.

Mr. Healy moved the adoption of the Majority Report and the motion was duly seconded.

Mr. William G. Symmers spoke in opposition to the motion. He pointed out that under the law of other countries liability can be limited to less than the United States limitation of $500 per package and that in South American countries and Japan liability can be limited to zero. Thus such clauses give an advantage to foreign shipowners in competition with American shipowners.

Mr. Knauth urged that legislation be proposed which would assure the protection of United States courts to foreign corporations owned and controlled by United States citizens. The President ruled that Mr. Knauth's remarks were not germane to the present motion, though they would be pertinent to a motion to approve the Minority Report.

Mr. MacDonald Deming spoke in support of the motion. He pointed out that the decision in *The Oklahoma* was not a holding that the clause was valid under all circumstances and that it would have to be determined whether or not enforcement of the clause was reasonable under the facts of each case. The effect of *The Oklahoma* was in his opinion only to shift the burden of proof of *forum non conveniens*. He therefore urged that no action be taken until a body of judicial opinion develops.

Mr. Edward B. Hayes of Chicago spoke in opposition to the motion. He expressed the opinion that the doctrine of *The Oklahoma* would be discouraging to a young port such as Chicago.

Mr. Cyril F. Powers suggested that, if something were going to be done, action should be taken to control the increasing tendency of foreign underwriters to bring their claims to the United States to collect under circumstances where they cannot collect under their own laws.

The President summarized the question before the house as being whether to go along with the majority, which would do nothing for the present, or to go along with the minority, which would do something but would take into account various suggestions, such as that made by Mr. Powers. Mr. Longley agreed with this summary.

Mr. Joseph T. McGowan spoke in opposition to the motion. He mentioned a case of his pending in Texas, in which the Court has a motion to decline jurisdiction under advisement and may not decide the motion until after expiration of the time to sue. If he should lose the motion, it might be too late to sue abroad. He therefore urged adoption of the Minority Report.

Mr. David P. Dawson spoke in support of the motion. He suggested the following considerations: (1) that our courts could be relied upon not to decline jurisdiction in such a way as to cause any real injustice, (2) that shippers can protect themselves by shipping only on American ships and that shippers can get protection through the conferences, and (3) that we should carefully consider

the possibility of retaliatory action by foreign countries. He therefore urged adoption of the Majority Report.

Mr. Henry C. Blackiston pointed out that many who had spoken to the motion were pleading special interests which they happened to represent and that the vote would probably be along similar lines. He suggested that it would be inappropriate for the Association, representing such diverse interests, to take a position on this subject but that the special interests involved should act through their respective trade organizations.

Mr. Longley summarized the discussion in opposition to the motion, emphasizing that *The Oklahoma* is against American interests. Mr. Heady summarized in support of the motion, emphasizing that it would be a dangerous

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precedent for the Association to take a stand supported by only some, or possibly a bare majority, of the membership.

The question was put and, on a show of hands, the motion was lost by a vote of 30 in favor and 39 opposed.

Mr. Longley moved the adoption of the Minority Report and the motion was duly seconded.

The question was put and, on a show of hands, the motion was carried by a vote of 37 in favor and 33 opposed.

Mr. Herbert M. Lord suggested that any representation made to any official body be accompanied by an indication of the closeness of the vote.

Mr. Deming, seconded by Mr. Knauth, moved for reconsideration on the basis that the Majority and Minority Reports should be put before the entire membership before

a decision was made. The motion was ruled to be out of order, since Mr. Deming had voted against the Minority Report.

Mr. Norman M. Barron moved that any bill prepared for submission to the Association be circulated to the entire membership before any action is taken thereon. The motion was duly seconded and unanimously carried.

Mr. Philip K. Verleger suggested that a new committee be appointed to draft the proposed legislation and that the majority of such a committee should not be opposed to the principle of the legislation.

The President stated that he would at least enlarge the present committee.

APPENDIX B

[4173]

DOCUMENT No. 409.

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

Report of the Committee to Consider Decisions of the Courts of the Second Circuit Regarding Jurisdiction and Forum

At the meeting of the Association, held November 9, 1956, a majority of the former committee submitted a report discussing the decisions of the U.S. Court of Appeals for the Second Circuit in *The Oklahoma*, 224 F. (2) 806; 1955 A. M. C. 1687; of the Southern District of New York in *The Bio Bio*, 127 F. Supp. 17, affirmed 227 F. (2d) 519. (C.A. 2) and of the District of New Jersey in *The Punta del Este*, 135 F. Supp. 394. It was held in the first two cases cited that United States courts should refuse to take jurisdiction of suits filed by United States citizens as cargo owners against foreign vessel owners if the bill of lading contracts contain provisions requiring that suits based on breach of their terms, be filed in the courts of the country of the ships' flags.

The report of the majority of the former committee recommended that no action be taken by the Association in relation to remedial legislation. A minority report was filed which pointed out that the decisions made it clear that without a prohibition in the United States Carriage of Goods by Sea Act or some other act against "jurisdictional" clauses in bills of lading, courts would continue to hold that a citizen of the United States having claims against a foreign vessel owner for damage to cargo, may

not look to the courts of his own country for justice, but is bound to institute any suit in a foreign country where there is a bill of lading provision limiting suit to the country of the ship's flag. It was recommended that a bill be introduced to amend the Carriage of Goods by Sea Act in this regard.

A motion to adopt the majority report having been lost, the Association adopted the minority report and directed that any proposed legislation which the Committee might advance for the approval of the Association, be circulated among the entire membership of the Association before any action should be taken on the Committee's recommendation.

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It having been suggested at the meeting of the Association that a new committee be appointed to draft the proposed legislation with a majority not opposed to the principle of remedial legislation, the president re-appointed the former committee with the addition of three new members.

Those members of the present committee who sign this report recommend to the Association that a bill be introduced in Congress amending the Carriage of Goods by Sea Act and that the Association actively work for adoption by Congress of this amendment. The amendment proposed by the Committee is to add the following language after Sec. 9:

> Any clause, covenant or agreement in a contract subject to this Act requiring the prosecution of claims in the courts of a foreign country shall be null and void and of no effect. A citizen of the United States of America suing in his or its own right to recover damages from a carrier for breach of such a contract

. shall not be barred from prosecuting his or its suit in the courts of the United States of America.

The purpose of the proposed amendment is, we think, clear. Prior to the decision in *The Oklahoma* (supra) it had long been the established law that a contractual provision seeking to oust a United States court of jurisdiction was void. The result of the decisions in *The Oklahoma*, *The Bio Bio*, and in the most recent case of *The Monrosa*, decided in the Eastern District of Texas (not reported), inhibiting a United States citizen from pursuing his rights against a foreign vessel owner in a United States court is, we think, so strange and inequitable as to require legislative action. The adoption by the Association, at the meeting of November 9, 1956, of the minority report of the former committee, makes it apparent that the Association as a whole agreed that legislation is called for.

Respectfully submitted,

RUSSEL A. MACKEY;
RUSSEL T. MOUNT;
WILLIAM G. SYMMERS;
GEORGE B. WARBURTON;
HENRY N. LONGLEY, Chairman

October 29, 1957.

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The undersigned members of the present Committee remain opposed to the introduction of the proposed bill, for the reasons stated in the report submitted at the 1956 Fall Meeting by a majority of the Committee as it was then constituted. That report, which failed of adoption by a vote of 39 to 30 of the members of the Association present

and voting, appears at pp. 4074-6 of M. L. A. Document No. 403 (Minutes of the 1956 Fall Meeting).

It is still felt there has been no serious prejudice to American litigants as a class as a result of *The Oklahoma* decision, and that this Association should not sponsor legislation to counteract the effect of isolated court decisions unless a substantial majority of the members believe that the decisions are contrary to the objectives of the Association.

In any event, if the Association is going to sponsor a bill to amend the Carriage of Goods Act, the undersigned members of the Committee feel that the bill should not be limited to the proposed addition of Section 9a, but should be enlarged so as to cover other amendments as well. For example, many members of the Association would probably be in favor of an amendment which would nullify the effect of the "both-to-blame" decision *(The Esso Belgium*, 343 U.S. 236, 1952 A.M.C. 659).

Respectfully submitted,

NORMAN M. BARRON,
HENRY C. BLACKISTON,
JOHN F. GERITY,
NICHOLAS J. HEALY, 3RD,
GORDON W. PAULSEN.

APPENDIX C

[4226]

DOCUMENT No. 414

Committee to Consider the Decision of the Courts Regarding Jurisdiction and Forum:

Mr. Henry N. Longley, Chairman of the Committee, referred to the Committee's report, which had been circulated as Association Document No. 409, consisting of two dissenting reports each signed by five members of the Committee, hereinafter for convenience referred to as the "Majority Report" and the "Minority Report" respectively.

Mr. Longley moved the adoption of the "Majority Report" and spoke in support thereof. He argued that, under recent decision, United States citizens are deprived of the right of choosing the forum in which to sue and that those who signed the "Minority Report" represented the interests of foreign shipowners.

Mr. Nicholas J. Healy, III, spoke in support of the "Minority Report". He argued that no court had abused its discretion in this regard in the past year. He also pointed out that the Association is deeply divided on this question, the "Majority Report" being in the interest of only one segment of the membership, and argued that the Association should not take a stand on a question as to which it is so divided.

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Mr. Longley's motion was duly seconded.

Mr. James M. Estabrook spoke in support of the "Minority Report" on the ground that the "Majority Report" does not subtantially represent the great majority

of the Association and is therefore not a persuasive authority on which to go to Congress.

Mr. Charles S. Haight also spoke in support of the "Minority Report". He argued that the courts should not be deprived of their discretion to remit cases to foreign courts because in cases where many witnesses would have to be brought from abroad at great expense to require a trial in the United States would be an injustice. He also pointed out that the *Oklahoma* decision, while it reflected and talked of the Bill of Lading clause, relied on the discretion of the admiralty courts in declining to retain jurisdiction.

Mr. Haight also pointed out that a move to change the Carriage of Goods by Sea Act in one respect would raise the question of amending it in other respects.

Mr. George B. Warburton, speaking in support of the "Majority Report", argued that cargo interests had been prejudiced during the period since the *Oklahoma* decision and that the Association should delay no longer in the matter.

Mr. Norman M. Barron spoke in support of the "Minority Report", arguing that the supporters of the "Majority Report" had not made a showing of actual prejudice to the interests of United States citizens.

Mr. Warburton mentioned that in the *Oklahoma* litigation in Sweden, the cargo interests were ordered by the court to post a bond for $25,000 and encountered technical difficulties which they would not have met in a United States court.

Mr. John F. Gerity argued that the "Minority Report" is out of order in view of the vote of the Association on this subject at the 1956 Fall Meeting.

Mr. Michael F. Whelan spoke in opposition to the "Majority Report". Mr. Whelan argued that the proposed amendment to the Carriage of Goods by Sea Act was so worded that it would give rise to a number of disputes as to its meaning.

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Mr. William H. Maness, in opposition to the "Majority Report", argued that it proposed class legislation and would tend to destroy international uniformity of law. He also argued that the wording of the proposed amendment was not clear.

Mr. Philip K. Verleger suggested that the law should be clarified to define narrowly and clearly which cases should and which should not be remitted to foreign jurisdictions to avoid having two suits pending in different jurisdictions while awaiting a decision in the preferred jurisdiction.

The question was put and the vote was 46 "yes" and 78 "no", the motion being lost.

Mr. Martin P. Detels, Chairman of the Committee, reported with reference to the *Wilburn Boat Co.* case that it was an action begun in the State Court and removed to the Federal Court in Texas, where the trial court decided in favor of the underwriters who were sued on a marine policy which covered the boat against fire. The decision of the District Court was affirmed by the Court of Appeals, on the basis of the maritime law. Then the case was taken to the Supreme Court which held that it should be decided according to State law. It went back to the District Court which, on the same evidence as before, then found in favor of the insured on all points, on the basis of the Texas State law. It is now again on appeal to the Court of Appeals.